

Message Text

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ACTION SCSE-00

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USIA-12 DEAE-00 JUSE-00 SSO-00 SY-04 SCA-01 /040 W

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P 060939Z MAY 74

FM AMEMBASSY ANKARA

TO SECSTATE WASHDC PRIORITY 3941

INFO AMCONSUL ADANA PRIORITY

AMCONSUL ISTANBUL

AMCONSUL IZMIR

UNCLAS SECTION 1 OF 2 ANKARA 3400

EO 11652 N/A

TAGS: CASC, TU

SUBJECT: ANTAKYA THREE: APPEALS COURT DECISION

REF: ANKARA 3193

1. ATTORNEY FARUK EREM HAS PROVIDED US WITH TEXT OF APRIL 26 APPEALS COURT DECISION IN ANTAKYA CASE (ROBERT HUBBARD, KATHRYN ZENZ, JOANN MCDANIEL). EREM SAID HE INTENDS WITHIN A MATTER OF DAYS TO CONTINUE PURSUIT OF CASE THROUGH REGULAR LEGAL CHANNELS BY FILING A PETITION WITH THE PROSECUTOR'S OFFICE, ASKING FOR A "CORRECTION OF JUDGMENT". (COMMENT: WE DO NOT RPT NOT BELIEVE THIS STEP WILL HAVE MUCH EFFECT ON THE SITUATION.) EMBASSY OFFICERS WILL MEET WITH EREM WITHIN WEEK TO EXPLORE WHAT OTHER STEPS MIGHT USEFULLY BE TAKEN IN BEHALF OF ANTAKYA THREE.

2. FOLLOWING IS EMBASSY'S TRANSLATION OF APPEALS COURT DECISION:

BEGIN QUOTE:

BASIC: 583

INF: T?/538

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5TH CRIMINAL DEPARTMENT
ROBERT - KATHRYN - JO ANN

THE SUSPECTS(ROBERT, KATHRYN AND JO ANN) ACCEPTED THE PROPOSAL OF AN AMERICAN NAMED WILLIAM, WHOM THEY MET IN GERMANY, TO DRIVE THE MINIBUSES, WHICH WERE TO BE RENTED BY THE SAID PERSON, TO BEIRUT AND TO BRING BACK AND DELIVER A SHIPMENT OF HASHISH IN GERMANY. AS A RESULT OF THIS AGREEMENT, THE THREE SUSPECTS SEPARATELY RENTED THREE MINIBUSES FROM SU INTER RENT COMPANY (WHICH IS INTERVENING IN THIS CASE) IN THEIR OWN NAMES WITH CONTRACTS THEY SIGNED INDIVIDUALLY. ON THE CONTRACT SIGNED BY SUSPECT KATHRYN ANN ZENZ WITH THE SAID COMPANY, THERE IS ALSO THE SIGNATURE OF THE OTHER SUSPECT ROBERT ERNEST HUBBARD AS A SECOND PERSON RENTING THE MINIBUS.

EACH SUSPECT, DRIVING THE MINIBUSES SEPARATELY, ENTERED TURKEY FROM IPSALA ON DECEMBER 3, 1972 AND EXITED FROM YAYLADAG ON DECEMBER 6, 1972. WHILE THEY WERE MAKING THEIR RETURN ENTRY AT CILVEGOZU ON DECEMBER 10, 1972, CUSTOMS OFFICIALS SEARCHED THE MINIBUSES UPON SUSPICION, AND CAUGHT THEM WITH HASHISH EXPERTLY HIDDEN IN SPECIAL COMPARTMENTS IN THE CEILINGS OF ALL THREE MINIBUSES. IN A SECOND SEARCH MADE IN THE MINIBUSES DRIVEN BY SUSPECTS ROBERT AND JO ANN, ADDITIONAL HASHISH WAS FOUND HIDDEN UNDER THE SEATS. THE TOTAL WEIGHT OF THE HASHISH CAPTURED IS 99 KG. 650 GR.; THIS HAS BEEN AUTHENTICATED IN THE REPORT OF THE CHEMISTRY SECTION OF THE FORENSIC MEDICINE DEPARTMENT.

IN HIS TESTIMONY AT THE COURT, SUSPECT ROBERT STATED THAT HE REACHED AN AGREEMENT WITH WILLIAM IN GERMANY; THAT HE FOUND THE OTHER SUSPECTS KATHRYN AND JO ANN WHOM HE MET IN GERMANY AND ADDED THAT HE WAS PAID 3000 DOLLARS TO RECRUIT DRIVERS FOR THE MINIBUSES; THAT THEY DROVE THE MINIBUSES SEPARATELY TO BEIRUT; AND THAT THE HASHISH WAS LOADED ON THE MINIBUSES BY WILLIAM WHO HAD COME THERE FOR THIS PURPOSE. AS RECORDED ON PAGE 7 OF THE MINUTES OF THE TRIAL COURT, HE (ROBERT) ADMITTED THAT HE HAD COMPLETE KNOWLEDGE OF THE HASHISH SHIPMENT; THAT WHILE HE WAS LOADING THE HASHISH INTO UNCLASSIFIED

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THE MINIBUSES THE OTHER SUSPECTS WERE NOT PRESENT; AND THAT HE WAS THE ONE WHO HIRED THEM AS DRIVERS OF THE VEHICLES.

SUSPECT KATHRYN IN HER TESTIMONY STATED THAT SHE RENTED THE MINIBUS USING THE MONEY GIVEN TO HER BY SUSPECT ROBERT; THAT SHE CAME TO BEIRUT BY HIGHWAY; THAT SHE HAD USED HASHISH TWICE WHILE SHE WAS IN AMERICA; THAT SHE DID NOT KNOW HASHISH HAD BEEN LOADED INTO THE VEHICLE; AND THAT SHE REJECTED THE

CONTENTS OF THE WRITTEN RECORD DRAFTED AT THE TIME OF THEIR CAPTURE AND HER STATEMENTS AT THE POLICE STATION AND THE COURT OF JUSTICE OF THE PEACE. THIS SUSPECT SAID IN HER STATEMENT AT THE POLICE STATION THAT "...SHE ACCEPTED THE PROPOSAL OF THE PERSON TO DRIVE BY CAR TO BEIRUT AND TO BRING BACK SOMETHING FROM THERE IN RETURN FOR 1000 DOLLARS."

SUSPECT JO ANN, DURING THE COURT PROCESS, STATED THAT THE VEHICLE DRIVEN BY HER WAS RENTED AT MUNICH BY HERSELF; THAT SHE DID NOT KNOW WHO LOADED THE HASHISH ON THE VEHICLE SHE RENTED; THAT SHE SMOKED HASHISH A FEW TIMES WHILE SHE WAS IN EUROPE; AND THAT SHE REJECTED HER STATEMENTS MADE DURING THE PROCESS OF INVESTIGATION. THIS SUSPECT, IN HER STATEMENT AT THE POLICE STATION, SAID "... THEY DEPARTED FROM GERMANY DRIVING THE VEHICLES WHICH WERE PAID FOR IN THE AMOUNT OF 1000 DOLLARS BY ANOTHER PERSON; THAT THEY WOULD BRING A SHIPMENT OF GOODS FROM BEIRUT; THAT AN AGREEMENT WAS REACHED ON THAT SUBJECT AND THEY ARRIVED IN BEIRUT WITH OTHER SUSPECTS; THAT THEY TOOK DELIVERY OF THE GOODS THEY WERE TOLD ABOUT; AND THAT WHEN THEY ARRIVED AT CILVEGOZU BORDER STATION THEY WERE CAUGHT WITH THE GOODS HIDDEN IN VARIOUS COMPARTMENTS OF THE VEHICLE".
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INFO OCT-01 ISO-00 L-03 EUR-06 H-01 PA-02 PRS-01 USIA-12

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TO SECSTATE WASHDC PRIORITY 3942

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THE COURT, REVIEWING ALL THE EVIDENCE AND TAKING EACH
PIECE OF EVIDENCE INTO CONSIDERATION, DECIDED AFTER

DISCUSSIONS THAT THIS TRIP WAS MADE EXCLUSIVELY TO TAKE THE HASHISH SECURED IN BEIRUT TO GERMANY, DUE TO THE FOLLOWING FACTS: (1) THAT ALL THREE SUSPECTS DEPARTED TOGETHER FROM GERMANY FOR BEIRUT IN THE VEHICLES THEY DROVE SEPARATELY AFTER THEY REACHED AN AGREEMENT WITH WILLIAM; (2) THAT THEY DROVE THE VEHICLES TO THE CAMP SITE IN BEIRUT WHICH THEY AGREED UPON WITH WILLIAM WHILE IN GERMANY; (3) THAT THE HASHISH WAS FOUND IN ALL THREE VEHICLES CAREFULLY HIDDEN IN SECRET COMPARTMENTS OF THE VEHICLES; (4) THAT ROBERT'S ANME WAS INCLUDED IN THE RENTAL CONTRACT MADE BY KATHRYN WITH THE COMPANY; (5) THAT THE TWO SUSPECTS ADMITTED PREVIOUSLY USING HASHISH, NAMELY KATHRYN ADMITTED THAT SHE SMOKED HASHISH TWICE IN AMERICA AND JO ANN SMOKED HASHISH SEVERAL TIMES IN EUROPE; (6) THAT THEY ATTEMPTED TO IMPORT HASHISH LOADED IN THE VEHICLES INTO TURKEY BY ENTERING TURKEY THROUGH IPSALA ON DECEMBER 3, 1972, EXITING FROM TURKEY ON DECEMBER 6, 1972 AND RE-ENTERING TURKEY THROUGH A DIFFERENT BORDER STATION (CILVEGOZU) ON DECEMBER 19, 1972; (7) AND THAT NO OTHER ITEM WAS FOUND IN THE VEHICLES BUT ONLY HASHISH.

IN VIEW OF THE EVIDENCE WHICH HAS BEEN STATED AND EVALUATED (A SUMMARY OF WHICH IS MADE ABOVE AND A DETAILED STATEMENT OF WHICH IS IN THE DECISION OF THE TRIAL COURT)
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AND WHICH CONSTITUTES GROUNDS FOR SENTENCING, IT HAS BEEN DECIDED THAT THE CHALLENGE OF THE SUSPECTS IN THEIR APPEAL PETITION AND THE CHALLENGE OF THEIR DEFENSE LAWYER REGARDING THE ESTABLISHMENT OF FACTS BY EVIDENCE CONCERNING KATHRYN AND JO ANN AND REGARDING THE QUALITY OF THE CRIME CONCERNING THE SUSPECT ROBERT SHOULD BE REJECTED AS LACKING LEGAL QUALIFICATION.

HOWEVER, IT NEEDS TO BE STATED THAT ARTICLE 36 OF THE TURKISH CRIMINAL CODE REQUIRES CONFISCATION OF THE VEHICLES IF THEY BELONG TO THE SUSPECTS. IN THIS INSTANCE, THE MINIBUSES DRIVEN BY THE SUSPECTS IN WHICH THEY HAVE TRANSPORTED HASHISH ARE NOT OWNED BY THE SUSPECTS, BUT BY SU INTER RENT COMPANY IN GERMANY. IN VIEW OF THE FACT THAT THE SUSPECTS RENTED THE VEHICLES BY SEPARATE CONTRACTS (COPIES OF WHICH ARE IN THE DOSSIER), ARTICLE 36 CANNOT BE ENFORCED IN THIS CASE. THIS FACT NOT HAVING BEEN TAKEN INTO CONSIDERATION, THE CONFICATION OF THE VEHICLES IS AGAINST THE LAW. FOR THIS REASON, THE CHALLENGE OF THE SUSPECTS IN THEIR APPEAL PETITION (REGARDING THIS POINT) AND THE DEFENSE STATEMENT OF THEIR LAWYER DURING THE APPEAL PROCESS ARE CONSIDERED JUSTIFIED, AND THEREFORE THIS (PORTION OF THE) DECISION, WHICH IS AUTOMATICALLY SUBJECT TO APPEAL, IS "REVERSED", DESPITE THE PRESENCE OF A REQUEST AND OPINION (BY THE PROSECUTOR) DEMANDING APPROVAL. IN VIEW OF THE PROVISIONS OF ARTICLE 321 OF THE CRIMINAL

TRIAL PROCEDURE LAW.

DECIDED UNANIMOUSLY ON APRIL 26, 1974.

END QUOTE.

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